

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

BARBARA JEAN SUMNER,

Plaintiff,

v.

**NANCY A. BERRYHILL, Acting
Commissioner of Social Security,**

Defendant.

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Case No. CIV-17-725-G

ORDER

Now before the Court is Plaintiff's Motion for an Award of Attorney's Fees Under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 *et seq.* (Doc. No. 29), filed December 5, 2018. Plaintiff requests attorney's fees in the amount of \$4,874.40. Defendant has failed to respond to Plaintiff's motion within the allotted time; consequently, the Court deems the motion confessed pursuant to LCvR 7.1(g).

On consideration of the record, the Court finds that Plaintiff is a prevailing party, the amount of the fee requested is reasonable, and there are no special circumstances that make an award of fees unjust in this case. *See* 28 U.S.C. § 2412(d)(1)(a). Further, the Commissioner has failed to demonstrate that her position was "substantially justified" within the meaning of the EAJA. *See Hackett v. Barnhart*, 475 F.3d 1166, 1172 (10th Cir. 2007). Accordingly, the Court **GRANTS** Plaintiff's motion and awards fees in the amount of \$4,874.40, payable to Plaintiff, in care of her attorneys, Troutman & Troutman, 1350 S. Boulder, Suite 410, Tulsa, OK 74119. If attorney's fees are also awarded under 42 U.S.C.

§ 406(b)(1) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff in accordance with *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED this 7th day of February, 2019.



CHARLES B. GOODWIN
United States District Judge